

Mayerson & Hartheimer, PLLC

Sandra E. Mayerson, Esq.

David H. Hartheimer, Esq.

845 Third Avenue, 11th Floor

New York, NY 10022

Tel: (646) 778-4380

Fax: (501) 423-8672

sandy@mhlaw-ny.com

david@mhlaw-ny.com

Counsel to Securian Life Insurance Company

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**OBJECTION OF SECURIAN LIFE INSURANCE COMPANY TO NOTICE OF
ASSUMPTION AND ASSIGNMENT OF ADDITIONAL CONTRACTS**

Securian Life Insurance Company (“Securian”) hereby files this objection (the “Objection”) to the Notice of Assumption and Assignment of Additional Contracts [Docket No. 3123] (the “Assignment Notice”). In support of this Objection, Securian states as follows:

BACKGROUND RELATING TO THE BANKRUPTCY PROCEEDING

1. Beginning on October 15, 2018 and continuing thereafter, the Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. On November 19, 2018, the Court entered the Order Approving Global Bidding Procedures and Granting Related Relief [Docket No. 816].

3. On January 18, 2019, the Debtors filed the Successful Bidder Notice, which, among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc., to acquire all or substantially all of the Global Assets, was the highest or best offer for the Global Assets. A copy of the asset purchase agreement between the Debtors and the Buyer (the “Asset Purchase Agreement”) is attached to the Successful Bidder Notice as Exhibit B.

4. On January 18, 2019, the Debtors filed the Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction [Docket No. 1731] (the “Cure Notice”). Exhibit A to the Cure Notice identified executory contracts that may be assumed and assigned and the Debtors’ proposed Cure Amount.

5. Exhibit A to the Cure Notice identified two agreements with Securian Financial Group, Inc. and a Master Services Agreement with Securian Life Insurance Company (the “MSA”) as contracts 6281, 6282 and 6283, respectively. The MSA had a proposed cure amount of \$0. *See* Cure Notice, Exhibit A.

6. Pursuant to the MSA, Securian provides group life and AD&D insurance policies for certain employees and retirees of the Debtors. For a brief description of the benefits provided by Securian, see also *Motion of Debtors for Entry of Order (I) Authorizing But Not Directing the Debtors to (A) Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (B) Pay and Honor Employee Medical and Other Benefits, and (C) Continue Employee Benefits Programs, and (II) Granting Related Relief* [Docket No. 31]. As of the Petition Date, the Debtors were obligated to pay approximately \$1.7 million per month in premiums and withheld employee contributions (the “Monthly Premiums”).

7. On January 26, 2019, Securian filed a timely objection to the Cure Notice [Docket No. 2031] (the “Cure Objection”), providing notice that the proposed Cure Amount was incorrect. At the time of the Cure Objection, \$3,017,535.25 of Monthly Premiums were outstanding. The Cure Objection also provided notice that additional Monthly Premiums would continue to accrue and become due prior to the closing of the Asset Purchase Agreement and/or assumption and assignment of the MSA.

8. On April 10, 2019, the Buyer filed the Assignment Notice. Exhibit 1 to the Assignment Notice identifies the MSA as reference number 26 and contract ID number 15975.

9. Exhibit 1 to the Assignment Notice again states that the Debtors’ Asserted Cure Amount for the MSA is \$0. However, without explanation, the Assignment Notice incorrectly states that the Counterparty’s Asserted Cure Amount is also \$0, and that there is no dispute as to the Cure Amount.

OBJECTION

10. Securian renews its objection to the proposed Cure Amount. Securian timely objected to the proposed Cure Amount by filing the Cure Objection. In addition, Securian supplements its Cure Objection with additional amounts that have accrued and remain outstanding as of the date of the proposed assumption and assignment. As of April 18, 2019, the date of the Designatable Contract Assumption and Assignment Objection Deadline, the Cure Amount for the MSA is **\$3,064,244.69**.

WHEREFORE, Securian objects to the Cure Amount for the MSA identified in the Cure Notice and in the Assignment Notice and respectfully requests that the Court (i) determine that the Cure Amount for the MSA is no less than \$3,064,244.69, and (ii) grant to Securian such other and further relief as is just and appropriate.

Dated: April 17, 2019

Mayerson & Hartheimer, PLLC
Counsel to Securian Life Insurance Company

By: /s/ Sandra E. Mayerson
Sandra E. Mayerson, Esq.
David H. Hartheimer, Esq.
845 Third Avenue, 11th Floor
New York, NY 10022
Tel: (646) 778-4380
Fax: (501) 423-8672
sandy@mhlaw-ny.com
david@mhlaw-ny.com

- and -

Fredrikson & Byron, P.A.
Counsel to Securian Life Insurance Company

James C. Brand (*pro hac vice* pending)
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Phone (612) 492-7000
Fax (612) 492-7077
jbrand@fredlaw.com

66507333.2